

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1517 CS Termination of Residential Rental Agreements by Violence Victims
SPONSOR(S): Gannon and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>4 Y, 0 N, w/CS</u>	<u>Lammers</u>	<u>Billmeier</u>
2) <u>Justice Council</u>	<u>6 Y, 0 N, w/CS</u>	<u>Lammers</u>	<u>De La Paz</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill creates s. 83.683, F.S., providing that a person who has obtained a permanent injunction against domestic violence, repeat violence, sexual violence, or dating violence and who has been granted exclusive possession of a dwelling unit may be released from a rental agreement.

The bill amends s. 83.595, F.S., adding a new subsection providing for landlords and tenants to agree in the rental agreement to liquidated damages and early termination fees in the event that the rental agreement is broken. The new subsection clarifies and codifies the long-standing common law rule approving liquidated damages upon breach or early termination of a rental agreement.

The bill amends s. 83.59, F.S., providing that, under certain circumstances, a landlord may recover possession of a dwelling unit 45 days after the death of a tenant.

This bill has no significant fiscal impact on state or local governments.

This bill has an effective date of July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families and safeguard individual liberty—This bill will allow the victim of domestic, repeat, sexual, or dating violence who has received exclusive possession of a residence to terminate a rental agreement after providing the landlord with a copy of a permanent injunction issued within the past fifteen days. The provisions of this bill apply to all residential lease agreements and cannot be waived by the parties.

B. EFFECT OF PROPOSED CHANGES:

Termination of Lease Agreements

A tenant may terminate a rental agreement when the landlord materially fails to comply with s. 83.51(1), F.S.,¹ or material provisions of the rental agreement within seven days of notice from the tenant specifying the noncompliance and indicating the tenant's intent to terminate the rental agreement. If the landlord does not complete the work necessary to make the dwelling unit tenantable, and the tenant then vacates the unit, the tenant will not be liable for rent during the time the dwelling unit remains uninhabitable.²

If a landlord fails to fulfill an expressly assumed obligation to repair and maintain the premises, the tenant may withhold rent after notifying the landlord, and shall give the landlord a written notice declaring the premises to be wholly untenable.³ The landlord shall have at least twenty days to make the repair or maintenance, and the tenant may withhold rent until the repair or maintenance has been performed.⁴ If the landlord does not complete the repair within the specified time, the tenant has the option of abandoning the premises, retaining the withheld rent, terminating the lease, and avoiding liability for future rent or charges under the lease.⁵ The tenant may exercise the remedy provided by this section in addition to any other existing remedies.⁶

A tenancy at will may be terminated by either party upon giving notice of a time period specified by statute and based upon the length of the periodic tenancy, whether it is a tenancy from year to year, quarter to quarter, month to month, or week to week.⁷ When a tenancy created by a written instrument has expired and the tenant continues to retain possession of the premises without renewing the lease, the holdover shall be construed to be a tenancy at sufferance.⁸ If the tenancy continues with the written consent of the lessor, then the tenancy becomes a tenancy at will.⁹

Injunctions against Domestic, Repeat, Dating, or Sexual Violence

Section 741.30(1)(a), F.S., creates a cause of action for an injunction for protection against domestic violence, and provides that a person who is the victim of domestic violence, as defined in s. 741.28,

¹ Section 83.51(1) requires a landlord to comply with all applicable building, housing, and health codes, and maintain all structural components and plumbing in good repair.

² Section 83.56(1)(a), F.S.

³ Section 83.201, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Section 83.03, F.S.

⁸ Section 83.04, F.S.

⁹ *Id.*

F.S.,¹⁰ or who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, has standing to seek an injunction against domestic violence. A domestic violence injunction may be sought by family or household members, and “[n]o person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse.”¹¹

Courts have adopted a two-pronged test for determining whether a relationship is such that the court can properly issue a domestic violence injunction against one of the parties.¹² First, the petitioner must have a familial or domestic relationship with the respondent that falls within the range of relationships listed in the statute, and second, the parties must have resided together, either in the past or present, as a family or household in the same dwelling unit.¹³ An action for an injunction does not affect the title to any real estate.¹⁴

Section 784.046, F.S., defines violence, repeat violence, sexual violence, and dating violence, and creates separate causes of action for repeat, sexual, and dating violence. Any person who is the victim of repeat violence,¹⁵ or the parent of a minor child who lives at home and is the victim of repeat violence, has standing to file a sworn petition for an injunction against repeat violence.¹⁶ “Dating violence” is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.”¹⁷ Any person who has reasonable cause to believe that he or she is in imminent danger of becoming the victim of an act of dating violence, or who is the victim of dating violence and has reasonable cause to fear imminent future dating violence, or who is the parent of a minor child living at home and is in need of protection from dating violence, may file a petition for an injunction to protect against dating violence.¹⁸

A person who is the victim of sexual violence,¹⁹ or the parent of any minor child living at home who is the victim of sexual violence, has standing to file a petition for a protective injunction against sexual violence if:

- The person has reported the sexual violence to a law enforcement agency and is cooperating with any criminal proceeding against the respondent; or
- The person who committed the sexual violence was sentenced to a term of imprisonment for the sexual violence, and such sentence expires or shall expire within 90 days of the filing of the petition.²⁰

The court is authorized to grant an injunction enjoining the respondent from committing any acts of violence and it is also given broad authority to order such other relief as is necessary to protect the victim.²¹ An order granting an injunction must be supported by competent, substantial evidence.²²

¹⁰ “‘Domestic violence’ means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.” s. 741.28(2), F.S.

¹¹ Section 741.30(1)(e), F.S.

¹² *Kokoris v. Zipnick*, 738 So. 2d 369, 370 (Fla. 4th DCA 1999).

¹³ *Id.*

¹⁴ Section 741.30(1), F.S.

¹⁵ “Repeat violence” means two incidents of violence or stalking committed by the respondent, one of which must have occurred within six months of the filing of the petition, and which were directed against the petitioner or an immediate member of the petitioner’s family. S. 784.046(1)(b), F.S.

¹⁶ Section 784.046(2)(a), F.S.

¹⁷ *Id.* at (1)(d).

¹⁸ *Id.* at (2)(b).

¹⁹ Sexual violence means one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person younger than 16, luring or enticing a child, sexual performance by a child, or any forcible felony wherein a sexual act is committed or attempted, regardless of the presence or absence of criminal charges resulting from the incident. *Id.* at (1)(c).

²⁰ *Id.* at (2)(c).

²¹ *Id.* at (6)(a), (7)(a)-(b).

Either party may move to have the injunction modified or dissolved at any time, and the terms of the injunction remain in effect until modified or dissolved.²³

The court may use a civil or criminal contempt proceeding to enforce a protective injunction.²⁴

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This bill creates s. 83.683, F.S., entitled "Termination of rental agreement by a victim of domestic violence, repeat violence, sexual violence, or dating violence." The bill defines "permanent injunction" as an injunction against domestic violence, pursuant to s. 741.30(6), F.S., or an injunction against repeat violence, sexual violence, or dating violence, pursuant to s. 784.046(7), regardless of whether the injunctive order is or may be appealed or reheard.

The bill defines "victim" as an adult, or the parent or guardian of a minor, who has been granted a permanent injunction against domestic violence, sexual violence, dating violence, or repeat violence, and who has been granted exclusive possession of a dwelling unit otherwise subject to regulation under the Florida law governing residential tenancies.

The bill provides that a victim may choose to terminate a rental agreement and vacate a dwelling unit if the victim provides the landlord with a copy of the permanent injunction, within 15 days of the issuance of the injunction, and written notice of the victim's intent to terminate the lease. The victim must vacate the rental unit on the date the lease expires by its own terms, the date the lease terminates by operation of law, or 30 days after giving notice to the landlord, whichever occurs first. The victim's obligations under the lease will end 30 days after giving notice to the landlord or when the lease expires on its own terms, whichever occurs first. The landlord is to give notice to each tenant pursuant to s. 83.49,²⁵ although the lease or tenancy shall continue in all respects subject with regard to all tenants except the victim, and all tenants including the victim are responsible for damage to the property that exceeds normal wear and tear.

Furthermore, if the respondent or any other tenant fails to retake possession of the premises 15 days after the victim gives notice of intent to vacate, and the rent is unpaid, the premises are deemed abandoned and the landlord may retake possession, including disposal of any abandoned property remaining in the dwelling unit.

The victim and respondent may not agree to waive or modify the provisions of this section. This section shall apply to all rental agreements subject to this part and entered on or after July 1, 2005.

The bill also amends s. 83.59, F.S., adding subsection (3)(d), to allow a landlord to retake possession of a dwelling unit 45 days after the death of a tenant, when the rent is unpaid and the landlord has not been notified of the existence of a probate estate or personal representative. Currently, s. 83.59(3)(a)-(c), F.S., provides that a landlord may only recover possession of a dwelling unit following a civil action where the right of possession is at issue, when the tenant has surrendered possession of the dwelling unit to the landlord, or when the tenant has abandoned the dwelling unit.

²² *Forrest v. Wilson*, 889 So. 2d 124, 124-25 (Fla. 1st DCA 2004) (citations omitted).

²³ Section 784.046(7)(c); (10).

²⁴ *Id.* at (9)(a).

²⁵ Section 83.49(3)(a), F.S., provides that:

Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim.

Choice of Remedies Upon Breach by Tenant

Finally, the bill amends s. 83.595(1), F.S., which sets forth a landlord's remedies if a tenant breaches a rental agreement. If a tenant breaches the rental agreement for the dwelling unit and the landlord has obtained a writ of possession, the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit," the statute currently specifies provides three options that the landlord has.²⁶

First, the landlord may "[t]reat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant."²⁷ Secondly, the landlord may "[r]etake possession of the dwelling unit for the account of the tenant," hold the tenant liable for the difference between the landlord's loss under the rental agreement and the amount the landlord recovers from reletting the premises.²⁸ Thirdly, a landlord may choose not to relet an apartment, but to continue charging rent from the lessee as it comes due through the end of the rental agreement.²⁹

The bill creates a new subsection to s. 83.595, clarifying that landlords and tenants may choose to contract for other remedies, such as liquidated damages for breach of a rental agreement and a specified fee for early termination of a rental agreement. The liquidated damages or early termination fee must be specified in the rental agreement and may not equal more than 2 months' rent. If a landlord chooses to include a liquidated damages clause, an early termination clause, or both, in the rental agreement, the landlord may not exercise any of the remedies listed in s. 83.595(1)(a)-(c). This subsection does not apply when the breach is failure to give notice at the end of the rental agreement.

Although liquidated damages and early termination clauses are not prohibited by the current language of s. 83.595, the Palm Beach Circuit Court has held in one case that the remedies set forth in s. 83.595 are exclusive and may not be modified by agreement.³⁰ The bill codifies the long-standing case law holdings approving liquidated damages clauses in rental agreements to be paid in the event of a breach.³¹

This bill shall take effect on July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Creates s. 83.683, F.S., allowing a person who has obtained a permanent protective injunction and who has been granted exclusive possession of a dwelling unit to terminate the lease within 15 days of issuance of the injunction, after giving written notice to the landlord.

Section 2. Amends s. 83.595, F.S., to state that a landlord and tenant may contract for liquidated damages in the event of a breach or early termination of a rental agreement.

Section 3. Amends s. 83.59, F.S., to allow a landlord to regain possession of a dwelling unit 45 days after the death of a tenant when certain conditions are met.

Section 4. Establishes an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

²⁶ Section 83.595(1), F.S.

²⁷ *Id.* at (a).

²⁸ *Id.* at (b).

²⁹ *Id.* at (c).

³⁰ Information provided by Gables Residential Services, Inc., on file with the Civil Justice Committee.

³¹ See, e.g., *Lefemine v. Baron*, 573 So. 2d 326, 328 (Fla. 1991); *Hyman v. Cohen*, 73 So. 2d 393, 400-01 (Fla. 1954).

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a fiscal impact upon landlords who suddenly lose tenants before the agreed-upon end date of the lease.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not grant rule-making authority to any administrative agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 6, the Civil Justice Committee considered this bill and adopted an amendment modifying the procedure for termination of a rental agreement when a victim obtains a permanent injunction and providing a procedure by which a landlord may reclaim possession of a dwelling unit after the death of a tenant. The bill was reported favorably with these amendments.

On April 22, 2005, the Justice Council considered this bill and adopted an amendment modifying the procedure for termination of a rental agreement by a victim, to require the victim to comply with a criminal investigation of

the incident. The amendment also amends s. 83.595, F.S., to provide that landlords and tenants may contract for early termination fees and liquidated damages in the event of a breach of the lease agreement, and it amends s. 83.59, F.S., to provide the landlord with a right of recovery when a tenant dies and after 45 days, the landlord has not been notified of the existence of a probate estate or personal representative.